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SENATE BILL 68

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LABOR; PROMOTING FINANCIAL INDEPENDENCE FOR VICTIMS
OF DOMESTIC ABUSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 50, Article 4 NMSA
1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--This act may be cited as the
"Promoting Financial Independence for Victims of Domestic Abuse
Act"."

Section 2. A new section of Chapter 50, Article 4 NMSA
1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Promoting
Financial Independence for Victims of Domestic Abuse Act:

A. "domestic abuse" has the same meaning as it does
in the Family Violence Protection Act;

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underscored material = new
[bracketed material] = delete

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1 B. "domestic abuse leave" means intermittent paid
2 or unpaid leave time taken by an employee for up to eight hours
3 in one day, for as many days as necessary, to obtain or attempt
4 to obtain an order of protection or other judicial relief from
5 domestic abuse or to meet with law enforcement officials, to
6 consult with attorneys or victim advocates or to attend court
7 proceedings related to the domestic abuse of an employee or an
8 employee's family member;

9 C. "employee" means a person who is employed by an
10 employer;

11 D. "employer" includes a person, a firm, a
12 partnership, an association, a corporation, a receiver or an
13 officer of the court of New Mexico, a state agency, or a unit
14 of local government or a school district;

15 E. "family member" means a minor child of the
16 employee or a person for whom the employee is a legal guardian;

17 F. "order of protection" means a court order
18 granted pursuant to the Family Violence Protection Act; and

19 G. "retaliation" means an adverse action against an
20 employee, including threats, reprisals or discrimination for
21 engaging in the protected activity of taking domestic abuse
22 leave."

23 Section 3. A new section of Chapter 50, Article 4 NMSA
24 1978 is enacted to read:

25 "[NEW MATERIAL] DOMESTIC ABUSE LEAVE REQUIRED--RETALIATION
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1 PROHIBITED.--An employer shall grant an employee domestic abuse
2 leave without interfering with, restraining or denying exercise
3 of rights under the Promoting Financial Independence for
4 Victims of Domestic Abuse Act or attempting to do so.
5 Retaliation against an employee for using domestic abuse leave
6 is prohibited."

7 Section 4. A new section of Chapter 50, Article 4 NMSA
8 1978 is enacted to read:

9 "[NEW MATERIAL] CERTIFICATION--VERIFICATION.--

10 A. When domestic abuse leave is taken in an
11 emergency, the employee or the employee's designee shall give
12 notice to the employer within twenty-four hours of commencing
13 the domestic abuse leave.

14 B. An employer may require verification of the need
15 for domestic abuse leave, and, if so, an employee shall provide
16 one of the following forms of verification through furnishing
17 in a timely fashion:

18 (1) a police report indicating that the
19 employee or a family member was a victim of domestic abuse;

20 (2) a copy of an order of protection or other
21 court evidence produced in connection with an incident of
22 domestic abuse, but the document does not constitute a waiver
23 of confidentiality or privilege between the employee and the
24 employee's advocate or attorney;

25 (3) the employee's written statement that the

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underscored material = new
[bracketed material] = delete

1 domestic abuse leave was taken for the purpose of obtaining an
2 order of protection or other judicial relief from domestic
3 abuse, to meet with law enforcement officials, to consult with
4 attorneys or victim advocates or to attend court proceedings
5 related to the domestic abuse; or

6 (4) the written statement of an attorney
7 representing the employee, a victim advocate, a law enforcement
8 official or a prosecuting attorney that the employee or
9 employee's family member appeared or is scheduled to appear in
10 court in connection with an incident of domestic abuse."

11 Section 5. A new section of Chapter 50, Article 4 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] IMPACT OF DOMESTIC ABUSE LEAVE ON OTHER
14 EMPLOYEE BENEFITS.--

15 A. For domestic abuse leave, an employee may use
16 accrued sick leave or other available paid time off,
17 compensatory time or unpaid leave time consistent with the
18 employer's policies.

19 B. To the extent permitted by law, an employer
20 shall not withhold pay, health coverage insurance or another
21 benefit that has accrued to the employee when an employee takes
22 domestic abuse leave. An employer shall not include time taken
23 for domestic abuse leave in calculating eligibility for
24 benefits."

25 Section 6. A new section of Chapter 50, Article 4 NMSA

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underscoring material = new
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1 1978 is enacted to read:

2 "[NEW MATERIAL] CONFIDENTIALITY.--An employer shall not
3 disclose verification information provided under Subsection B
4 of Section 4 of the Promoting Financial Independence for
5 Victims of Domestic Abuse Act and shall maintain
6 confidentiality of the fact that the employee or employee's
7 family member was involved in a domestic abuse incident, that
8 the employee requested or obtained domestic abuse leave and
9 that the employee made any written or oral statement about the
10 need for domestic abuse leave. An employer may disclose an
11 employee's information related to domestic abuse leave only
12 when the employee consents, when a court or administrative
13 agency orders the disclosure or when otherwise required by
14 federal or state law."

15 Section 7. A new section of Chapter 50, Article 4 NMSA
16 1978 is enacted to read:

17 "[NEW MATERIAL] ENFORCEMENT.--

18 A. The workforce solutions department is authorized
19 to enforce the Promoting Financial Independence for Victims of
20 Domestic Abuse Act and to investigate complaints made by
21 persons who claim to be aggrieved pursuant to the provisions of
22 that act.

23 B. An employee has the right to bring an action in
24 violation of the Promoting Financial Independence for Victims
25 of Domestic Abuse Act in a court of competent jurisdiction to

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